

REMARKS

Claim 1 has been amended to specify that the composition is an aqueous glyphosate concentrate. Support for this amendment can be found on page 5, lines 16-22. Claim 1 has been amended to replace the term “polyethylene oxide” with “poly(alkylene oxide)”. Support for this amendment can be found in the specification at page 1, line 20 as well as claims 8, 9 and 22 as originally filed. Claim 1 has been amended by incorporation of the limitations of original claim 2. Accordingly, claim 2 has been canceled. Claim 1 has been amended to make the formula (I) for the poly(alkylene oxide) alkanol more clear. Similarly, the specification at page 1, lines 19-24 has been amended to correct an obvious error in formula (I). No new matter has been added.

Applicants would like to direct the Examiner's attention to the fact that the poly(alkylene oxide) alkanols of the present invention are branched. The use of these branched alcohols is critical to the low foaming performance of the claimed glyphosate formulations and Applicants submit that this is neither taught nor suggested by the references of record.

Claims 1-23 were rejected under 35 U.S.C. 112, second paragraph as allegedly being indefinite.

Original claim 1 was drawn to a polyethylenoxide alkanol. Further, the examiner considered the structure set forth in original claim 1 unclear. In view of the present amendments, Applicants submit that the 112, second paragraph rejections have been overcome.

Claims 1, 3-9, 12, 15, 16, 19 and 23 have been rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Moreno et al. (US5324708). Applicants respectfully traverse.

Claim 1 has been amended by incorporation of the limitations of original claim 2 – which was not rejected as anticipated over Moreno. Accordingly, Applicants submit that Moreno fails to anticipate the claims as presently amended.

The Examiner takes the position that “the ethoxylated nonyl phenol is additional anti-foam”. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. (MPEP 2144.03) Applicants

traverse the examiner's assertion of official notice. In the present case, the Examiner has not provided a clear and unmistakable technical line of reasoning underlying this decision. Nonylphenol ethoxylates are recognized in the chemical art as surfactants or adjuvants.

For instance, the following information is provided on Dow's internet site (<http://www.dow.com/surfactants/products/nonylph.htm>) relating to their Tergitol™ NP line of products:

Nonylphenol Ethoxylates (NPE)

TERGITOL™ NP Series nonionic surfactants deliver a combination of economy and performance in a wide variety of applications, including cleaning product formulations, paints and coatings, emulsion polymerization, and many others. These NPE surfactants are used anywhere there is a need for increased surface activity, and provide excellent all-purpose detergency and wetting, as well as solubilization and emulsification.

While the Moreno patent fails to provide sufficient information regarding the ethoxylated nonylphenol to determine what product was actually being used, Applicants submit that the Examiner has failed to properly support the requirement for official notice.

Claims 1-23 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Moreno et al. (US5324708) in view of Wikeley (US6107249) and with respect to claim 21 (Nielson et al. (US5795847)). Applicants respectfully traverse.

Moreno is directed to solid, non-hygroscopic monoammonium salts of phosphonic and phosphinic acids. Extensive lists of 'auxiliary products' are listed in Moreno (col. 7, line 40 to col. 8, line 46) and Moreno provides no guidance of the benefits obtained by the compositions of the present invention. In order to further distinguish the present invention from the solid compositions of Moreno, Applicants have amended claim 1 to specify that the composition is an aqueous glyphosate concentrate.

Wikeley fails to remedy the deficiencies of Moreno. Even if Wikeley were to teach or suggest concentrations of glyphosate and an alkyl polyglycoside within the scope of the present claims, there is no motivation provided to modify the solid, non-hygroscopic salts of Moreno in view of the teachings of Wikeley to arrive at the claimed invention.

The examiner relies on Nielson for the addition of certain amounts of ammonium sulfate to a glyphosate formulation. Similar to Wikeley, Nielson's teaching of the addition of ammonium sulfate to glyphosate formulations would not lead one to modify Moreno and form an aqueous

concentrate as Moreno is directed to forming solid, non-hygroscopic salts of phosphonic or phosphinic acids and such a modification would destroy the teachings of Moreno.

As this response is submitted within three months from the mailing date of the Office Action, no additional fees are believed necessary.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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